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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,270	01/18/2001	William Gross	IDEALAB.001A	6161
7590	04/06/2005		EXAMINER	
JAMES P NAUGHTON ESQ BRINKS HOFER GILSON & LIONE P O BOX 10395 CHICAGO, IL 60610			MCQUELLAN, JAMES S	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/765,270	GROSS, WILLIAM	
	Examiner James S McClellan	Art Unit 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 1/5/05.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,5-15 and 18-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 14 is/are allowed.
- 6) Claim(s) 1,5-13,15 and 18-22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

*Amendment*

1. Applicant's submittal of an amendment on 1/5/05 was entered, wherein:
  - claims 1, 5-15, and 18-22 are pending and
  - claims 1, 5-15, and 18-22 have been amended.

*Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
3. Claims 1, 5-13, 15, and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Internet Publication to Ebay ([www.ebay.com](http://www.ebay.com)) in view of U.S. Patent No. 5,664,115(Fraser).

The Ebay Publication was published on 4/28/99 (see page 1, "Last Updated: 4/28/99") and was accessed on 9/3/03 via an Internet archive website ([www.archive.com](http://www.archive.com)).

Regarding **claim 1**, Ebay discloses ranking offerings offered by at least one on-line vendor, comprising: operating a ranking module (using the Feature Auction option, see page 8, wherein the vendor selects whether to use the "Feature Auction" option to place their product at the top of the page, wherein Ebay receives a fee from the vendors that decide to use the "Feature Auction" option) affiliated with a first entity (Ebay), receiving a search parameter of a user (see page 1, "Search" input); identifying at least a first offering from an on-line vendor and a second

offering from an on-line vendor that match the search parameter (see page 2, “Featured Auction”, “Appear at the very top of the listings”); and ranking, with the ranking module, the first offering relative to the second offering so as to increase income received by the first entity (Ebay); calculating an estimated first selection revenue using the first selection likelihood and a fee to paid to the first entity (Ebay) in the event the user selects the first offering; and calculating an estimated second selection revenue using the second selection likelihood and a fee to paid to the first entity (Ebay) in the event the user selects the second offering; and [claim 5] calculating an estimated first purchase commission (Feature Auction fee of \$99.95; see page 8) that corresponds to the commission received by the first entity (Ebay) when a user purchases an item offered in the first offering; and calculating an estimated second purchase commission that corresponds to the commission received by the first entity (Ebay) when a user purchases an item offered in the second offering.

Regarding **claim 15**, Ebay discloses a system that ranks offerings by at least one on-line vendor as set forth above for method claim 1. Ebay is relied upon to reject **claims 16 and 18** for same reasons that similar claims 2 and 5 were rejected in the above paragraph.

The Ebay Publication discloses the method and systems as set forth above, but fails to explicitly disclose estimating a purchase likelihood by a user.

Fraser teaches the use of estimating a purchase likelihood by a user (see column 5, lines 27-34 and column 9, lines 2-7).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Ebay Publication with user purchasing likelihood information as taught

by Fraser, because determining the likelihood of a user's desire to purchase a product will allow the selling entity to more efficiently display items for purchase to the potential buyer.

*Allowable Subject Matter*

4. Claim 14 is allowed.

*Response to Arguments*

5. Applicant's arguments filed January 5, 2005 have been fully considered but they are not persuasive.

On page 13, third paragraph, Applicant argues that the Ebay publication does not disclose calculating an estimated selection revenue for an offering, as recited in claim 1. The Examiner respectfully disagrees. More specifically in the next paragraph, Applicant notes that “[s]electing an offering from the list does not mean that the user will purchase something, only that a referral has been made.” Applicant notes that Ebay does not disclose estimated revenue based on selection revenues. The Examiner interprets the claim in a broader scope. The Examiner contends that it is reasonable to interpret the term “selection” to refer to a user purchasing an item, not merely “clicking-through” the item. Based on the Examiner’s interpretation of the term “selection, Ebay meets the claimed limitations, because Ebay charges insertion fees, as well as,<sup>7</sup> final value fees.

On page 14, first full paragraph, Applicant argues that the Ebay publication does not disclose comparing and ranking listings using purchase commission revenues in addition to selection revenues. The Examiner respectfully disagrees. As set forth above, Ebay charges

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insertion fees, as well as, final value fees which are based on a user's "selection" of an item. In this case, the final value fees of Ebay are analogous to the claimed purchase commission revenues.

On page 14, third full paragraph, Applicant argues that the Examiner's motivation in support of combining the references is conclusory and is not suggested in either of the cited references. Suggestion to combine does not need to come directly from the references, but may be found in the knowledge of one of ordinary skill in the art at the time the invention was made. In this case, Fraser clearly states the system determines the buyer's likelihood to purchase based on the buyers qualifications (see Fraser; column 9, lines 2-7). It would be clear to one of ordinary skill in the art that buyers are more likely to purchase items that they are qualified to purchase as opposed to items that buyers are not qualified to purchase. Therefore, the Examiner's motivation is appropriate for combining the Ebay publication and Fraser.

### *Conclusion*

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the

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statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jim McClellan whose telephone number is (703) 305-0212. The examiner can normally be reached on Monday-Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski, can be reached at (703) 308-5183.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

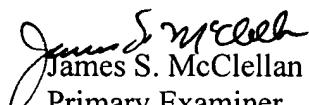
Any response to this action should be mailed to:

Commissioner of Patent and Trademarks  
Washington D.C. 20231

or faxed to:

(703) 872/9306 (Official communications) or  
(703) 746-3516 (Informal/Draft communications).

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive,  
Arlington, VA, 7<sup>th</sup> floor receptionist.

  
James S. McClellan  
Primary Examiner  
A.U. 3627

jsm  
April 1, 2005